APPEAL NO. 022868
FILED DECEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on October 21, 2002. The appellant/cross-respondent (claimant) appeals the hearing officer's determination that the claimant had disability from January 17 until March 17, 2002, contending that she had disability to August 21, 2002. The respondent/cross-appellant (self-insured) appeals the hearing officer's determinations that the claimant sustained a compensable injury on _____, and that she has disability as a result of her injury.

DECISION

We affirm.

INJURY

Essentially, the self-insured quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order in regard to the hearing officer's determination that the claimant sustained a compensable injury.

DISABILITY

The claimant testified that she has not been able to work because of her injuries since January 17, 2002. The claimant contended she was injured while driving a bus, which hit a pothole and jostled her. She further testified that her treating doctor released her to return to light duty on May 28, 2002, but that when she went to her

employer the employer said they did not have light duty for her during the summer and she should report back in the fall. Her treating doctor diagnosed a lumbar strain, cervical strain and trapezius strain and prescribed physical therapy. On August 19, 2002, her treating doctor said that the claimant could return to work on August 21, 2002, with restrictions. The claimant has not worked since her accident.

The carrier hired Dr. C to perform a peer review of the claimant's medical records. Dr. C did not examine the claimant. He opined that a soft tissue injury of this nature should last "0-8 weeks." Dr. C also stated that the claimant "reached an appropriate end of treatment date as the release for return to light duty work per [the claimant's treating doctor] in May 2002." We note that there are no actual treatment or therapy notes in evidence that go beyond early March 2002.

The hearing officer states in his Findings of Fact that the claimant's injuries "would have resolved by March 17, 2002, as reported by Dr. C" and determined that the claimant's disability ended on March 17, 2002. This is apparently based upon the maximum number of weeks that Dr. C opined a soft tissue injury of this nature should be expected to cause problems.

While the opinion of a doctor who has not examined the claimant should not ordinarily be given much weight, especially if actual treatment records show continuing and debilitating effects of an injury, in this case the hearing officer could consider the mechanism of injury, the nature of the injury, and conclude that it was a fairly mild injury that could not account for being off work through the date of the CCH. Moreover, there is a lack of medical records after March 2002 that could refute Dr. C's conclusions about how long the effects of the injury should have lasted. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. King's, *supra*. We affirm the determination on disability.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Margaret L. Turner
Appeals Judge